STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 10, 2014
v	No. 312897 Ionia Circuit Court
ROBERT EUGENE PLASTER, Defendant-Appellant.	LC No. 2011-015171-FC

Before: METER, P.J., and O'CONNELL and SHAPIRO, JJ.

PER CURIAM.

Defendant appeals as of right his convictions of first-degree criminal sexual conduct (CSC), MCL 750.520b(1)(c); two counts of child sexually abusive activity, MCL 750.145c(2); possession of child sexually abusive material, MCL 750.145c(4); two counts of using a computer to commit a crime, MCL 752.796(1) and MCL 752.797(3); and furnishing alcohol to a minor, MCL 436.1701(1). The trial court sentenced defendant to 15 to 35 years' imprisonment for his CSC conviction, seven to 20 years' imprisonment for each conviction of child sexually abusive activity, four to seven years' imprisonment for one of the computer convictions, seven to 20 years' imprisonment for the other computer conviction, and one to four years' imprisonment for the conviction of possessing child sexually abusive material. The trial court also fined defendant for the conviction of furnishing alcohol to a minor. The sentence for the CSC conviction is to be served consecutively to the other sentences, which are to be served concurrently. We affirm.

Defendant's son invited a group of friends, including two female friends, both aged 15, who were the victims in this case, to a party at his and defendant's house. Defendant supplied vodka for the party. During the party, one of the victims, PR, left the house to go to a friend's house. At approximately 4:00 a.m., defendant telephoned the friend and demanded that PR return to his house. The friend dropped PR off at a Meijer parking lot, and defendant drove her back to his house. At the house, PR began vomiting and she took a shower. Defendant's son and the other victim, MR, also entered the shower and began engaging in sexual activities. Defendant entered the bathroom and filmed his son and the victims in the shower with a video camera. Defendant encouraged the victims to show their breasts to the camera, and the two victims rubbed each other's breasts. PR left the shower to dry her hair, and defendant's son went to his bedroom with MR to engage in sexual intercourse. Immediately after drying her hair, PR joined defendant's son and MR and all three engaged in sexual activities. Defendant walked into the bedroom and congratulated his son, and his son told him to leave. Defendant left the room

but reentered a few minutes later, and PR testified that defendant inserted his finger into her vagina after entering the room. The video recording of the shower was later found on defendant's laptop computer.

Defendant first argues that the trial court misscored offense variable (OV) 8, OV 10, and OV 19. A trial court's factual determinations during sentencing are reviewed for clear error and must be supported by a preponderance of the evidence. *People v Hardy*, 494 Mich 430, 438; 835 NW2d 340 (2013). Whether the facts are "adequate to satisfy the scoring conditions prescribed by statute" is a question of statutory interpretation, which we review de novo. *Id*.

A court properly scores OV 8, victim asportation or captivity, at 15 points when "[a] victim was asported to another place of greater danger or to a situation of greater danger or was held captive beyond the time necessary to commit the offense[.]" MCL 777.38. Asportation "does not require the use of force." *People v Steele*, 283 Mich App 472, 490-491; 769 NW2d 256 (2009). Here, after demanding that PR return to his house, defendant met her in a Meijer parking lot and drove her back to his house. Thus, a preponderance of the evidence supports a finding of asportation, *Hardy*, 494 Mich at 438, because defendant's act of driving PR from the parking lot to his house constituted asporting PR to a place where she was secreted from observation by others and where a situation of greater danger was presented. See, generally, *People v Spanke*, 254 Mich App 642, 647-648; 658 NW2d 504 (2003). Moreover, contrary to defendant's argument, the evidence supports the finding that he intended to engage in sexual activities at his house. One of defendant's cellmates from his pretrial detention testified that defendant knew that PR "might do something" with defendant if defendant got her drunk, and defendant supplied vodka for PR to drink at the party. Defendant himself testified that his son told him that PR was intoxicated, after which defendant called the friend, demanding that PR return to his house. Thus, a preponderance of the evidence supports a finding that PR was asported to a place of greater danger. *Hardy*, 494 Mich at 438. The trial court properly scored OV 8 at 15 points.

A court scores OV 10, exploitation of a vulnerable victim, at 15 points when "[p]redatory conduct was involved[.]" MCL 777.40. "'Predatory conduct' means preoffense conduct directed at a victim for the primary purpose of victimization." MCL 777.40(3)(a). This "does not encompass *any* 'preoffense conduct,' but rather only those forms of 'preoffense conduct' that are commonly understood as being 'predatory' in nature, e.g., lying in wait and stalking, as opposed to purely opportunistic criminal conduct or preoffense conduct involving nothing more than run-of-the-mill planning to effect a crime or subsequent escape without detection." *People v Huston*, 489 Mich 451, 462; 802 NW2d 261 (2011) (internal quotation marks and citation omitted). For a score of 15, a "defendant's preoffense conduct only has to be directed at 'a victim,' not any specific victim, and the victim does not have to be inherently vulnerable." *Id*. at 468. "Instead, a defendant's 'predatory conduct,' by that conduct alone . . ., can create or enhance a victim's 'vulnerability.'" *Id*. Here, defendant knew that PR "might do something" with him if he got her drunk, and defendant supplied vodka for her to drink at the party. Defendant demanded that PR, who defendant knew was intoxicated, return to his house after she had left. Thus, a preponderance of the evidence supports a finding that defendant engaged in preoffense "predatory conduct." *Hardy*, 494 Mich at 438. Moreover, defendant's act was directed at a "victim," and defendant's predatory conduct created and enhanced PR's

vulnerability by encouraging consumption of alcohol by a minor. The trial court properly scored OV 10 at 15 points. See *People v Waclawski*, 286 Mich App 634, 686; 780 NW2d 321 (2009).

A court scores OV 19, interference with administration of justice, at 10 points when "[t]he offender otherwise interfered with or attempted to interfere with the administration of justice[.]" MCL 777.49. "Because the circumstances described in OV 19 expressly include events occurring after a felony has been completed, the offense variable provides for the 'consideration of conduct after completion of the sentencing offense.'" *People v Smith*, 488 Mich 193, 202; 793 NW2d 666 (2010), quoting *People v McGraw*, 484 Mich 120, 133-134; 771 NW2d 655 (2009). "The phrase 'interfered with or attempted to interfere with the administration of justice' is broad." *Steele*, 283 Mich App at 492. Defendant wrote a letter to a witness requesting that, although the witness told the police that he did not remember anything, the witness should think about what had happened and remember certain events that defendant claimed happened, which showed that defendant was innocent. Defendant asked the witness, "[c]an you help me?" and told him, "[d]o not save this letter. Please destroy it." The witness testified that he did not remember or perform the events defendant stated in the letter and testified that he viewed the letter as defendant asking him to lie. A preponderance of the evidence, *Hardy*, 494 Mich at 438, supports a finding that defendant attempted to interfere with the administration of justice. The trial court properly scored OV 19 at 10 points.

Defendant next argues that the evidence was insufficient to support his convictions. Although defendant sets forth the correct standards of review, defendant fails to cite any law supporting his argument that the evidence was insufficient to support his convictions. Moreover, defendant fails even to address the elements and statutory language of each crime. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment of an issue with little or no citation of supporting authority." *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). Thus, we find that defendant's sufficiency argument is abandoned. Even if it were not, defendant's argument seems to be based solely on credibility and the weight of the evidence, and we will not interfere with the jury's determinations regarding these issues. *People v Unger*, 278 Mich App 210, 222; 749 NW2d 272 (2008).

In a standard 4 brief, defendant challenges the scoring of OV 4 and OV 13 and challenges the scoring of prior record variable (PRV) 7. Defendant also argues that the trial court erred in not applying the same-incident rule during sentencing. A court scores OV 4, psychological injury to victim, at 10 points when "[s]erious psychological injury requiring professional treatment occurred to a victim[.]" MCL 777.34. The stepfather of one of the victims wrote a letter to the court stating that the victim was currently seeking therapy because of the incident. Thus, the trial court did not err in scoring OV 4 at 10 points because the evidence supported that the victim had a serious psychological injury that "require[d] professional treatment." MCL 777.34(1)(a).

A court scores OV 13, continuing pattern of criminal behavior, at 25 points when the "offense was part of a pattern of felonious criminal activity involving 3 or more crimes against a person[.]" MCL 777.43. "For determining the appropriate points under this variable, all crimes within a 5-year period, including the sentencing offense, shall be counted regardless of whether the offense resulted in a conviction." MCL 777.43(2)(a). Defendant's felony convictions arising

from the present incidents are all crimes against a person. MCL 777.16y; MCL 777.16g; MCL 777.17c(2). Thus, defendant's six crimes against a person "[were] part of a pattern of felonious criminal activity involving 3 or more crimes against a person[.]" MCL 777.43(1)(c). Defendant argues that only felonies aside from the sentencing offense should be considered under OV 13. However, MCL 777.43(2)(a) states, "[f]or determining the appropriate points under this variable, all crimes within a 5-year period, *including the sentencing offense*, shall be counted regardless of whether the offense resulted in a conviction" (emphasis added). Although defendant had no prior felonies, his six crimes against a person were "sentencing offense[s]" and "shall be counted." MCL 777.43(2)(a). Nothing in the statute indicates that only prior or subsequent felonies should be scored under OV 13, and "we cannot read into an unambiguous statute a provision not written by the Legislature . . . ." *People v Orr*, 275 Mich App 587, 595; 739 NW2d 385 (2007). The trial court properly scored OV 13 at 25 points.

A court scores PRV 7, subsequent or concurrent felony convictions, at 20 points when the "offender has 2 or more subsequent or concurrent convictions[.]" MCL 777.57. MCL 777.57(2)(c) instructs courts: "Do not score a concurrent felony conviction if a mandatory consecutive sentence or a consecutive sentence imposed under section 7401(3) of the public health code, 1978 PA 368, MCL 333.7401, will result from that conviction." Defendant was convicted of six concurrent felonies. Thus, defendant had "2 or more subsequent or concurrent convictions[.]" MCL 777.57(1)(a). While defendant's sentence for first-degree CSC was ordered to be served consecutively to the rest of the sentences, MCL 750.520b(3) states, "[t]he court *may* order a term of imprisonment imposed under this section to be served consecutively to any term of imprisonment imposed for any other criminal offense arising from the same transaction." MCL 750.520b (emphasis added). "'This Court should first look to the specific statutory language to determine the intent of the Legislature,' which 'is presumed to intend the meaning that the statute plainly expresses.'" *People v Giovannini*, 271 Mich App 409, 412; 722 NW2d 237 (2006), quoting *Institute in Basic Life Principles, Inc v Watersmeet Twp*, 217 Mich App 7, 12; 551 NW2d 199 (1996). "If the language is clear and unambiguous, the plain meaning of the statute reflects the legislative intent and judicial construction is not permitted." *Giovannini*, 271 Mich App at 412. The use of the word "may" "designates discretion," while "shall" designates a mandatory provision. *Old Kent Bank v Kal Kustom, Enterprises*, 255 Mich App 524, 532; 660 NW2d 384 (2003). Thus, the trial court's decision to order a consecutive sentence for defendant's first-degree CSC conviction was discretionary, *id.*, and MCL 777.57(2)(c) is not implicated because defendant's sentence was not a "mandatory consecutive sentence." The trial court properly scored PRV 7 at 20 points.

Finally, under the same-incident rule, each prior felony must arise from separate criminal incidents in order to enhance a defendant's sentence as an habitual offender. *People v Gardner*, 482 Mich 41, 52-53; 753 NW2d 78 (2008). However, Michigan has rejected the use of the same-incident rule in interpreting its habitual offender statute. *Gardner*, 482 Mich at 68. Moreover, defendant was not sentenced as an habitual offender, so even if such a rule was in effect, there was no need for the trial court to apply it.

Defendant raises many additional issues in his standard 4 brief. However, defendant fails to adequately explain and argue the merits of his claims and fails to cite to any supporting legal authority. Defendant also fails to cite to the record in support of his arguments. Thus, we find

that defendant has abandoned these issues. *Kelly*, 231 Mich App at 640-641. Even if he had not, they provide no basis for reversal.

Affirmed.

/s/ Patrick M. Meter
/s/ Peter D. O'Connell
/s/ Douglas B. Shapiro